

The provisions of 49 U.S.C.A. 24301(l) prevent the State of Illinois from taxing ABC and its rail carrier subsidiaries. (This is a GIL.)

April 19, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 20, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have enclosed a copy of our July 2005 letter to the Gas Use Tax Division requesting a refund for gas use tax. To date there has been no response to our request.

The ABC is exempt from all state and local taxes and fees under the provisions of 49 U.S.C. § 24-301. Since the legal incidence of the gas use tax is on ABC as purchaser, the tax should not apply on sales to ABC.

Since the Gas Use Tax Division has not responded to our request for refund, we ask that your office review the matter and provide applicable guidance to the Tax Division.

DEPARTMENT'S RESPONSE

Beginning October 1, 2003, a Gas Use Tax was imposed upon the privilege of using in this State gas obtained in a purchase of out of state gas at the rate of 2.4 cents per therm or 5% of the purchase price for the billing period, whichever is the lower rate.

The provisions of 49 U.S.C.A. 24301(l) provide that ABC or a rail carrier subsidiary of ABC is exempt from a tax or fee imposed by a State, a political subdivision of a State, or a local taxing authority and levied on it after September 30, 1981.

The legal incidence of the Gas Use Tax is upon users of gas. Consequently, ABC as a user of gas bears the incidence of this tax. However, the provisions of 49 U.S.C.A. 24301(l) clearly exempt ABC and its rail carrier subsidiaries from taxes imposed and levied upon it by a State. As a result, entities delivering gas to ABC or its rail carrier subsidiaries are not required to collect tax from ABC or its rail carrier subsidiaries. If ABC has registered as a self-assessing purchaser, it is not required to pay the Gas Use Tax.

Claims for credit are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. If a retailer collects and remits to the Department tax on gas that should have been exempt, the retailer may file a claim for credit. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the entity from which he has collected the tax. In the case of a self-assessing purchaser, that purchaser may file for a credit or refund.

Claims for credit are filed on form RG-1-X, Amended Gas Tax Return. (This form is available on the Department's web site.) If tax was paid to a retailer, the retailer must file for the credit. If a self-assessing purchaser paid the tax, the self-assessing purchaser must file the claim.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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